



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/898,568	07/03/2001	Arvind Gupta	42390P11139	2719

8791 7590 03/25/2005

BLAKELY SOKOLOFF TAYLOR & ZAFMAN  
12400 WILSHIRE BOULEVARD  
SEVENTH FLOOR  
LOS ANGELES, CA 90025-1030

EXAMINER

VU, TUAN A

ART UNIT PAPER NUMBER

2193

DATE MAILED: 03/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/898,568	GUPTA, ARVIND	
	<b>Examiner</b>	<b>Art Unit</b>	
	Tuan A Vu	2124	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 22 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                         |                                                                             |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                                |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____                                                             | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. This action is responsive to the Applicant's response filed 11/22/2004.

As indicated in Applicant's response, claim 13 has been amended. Claims 1-22 are pending in the office action.

### ***Claims Objections***

2. Claims 2, 8, 16, 21 are objected to because of the following informalities: the recited limitation 'determining the application program installer incorrectly identified a successful installation ... on the first server' is not formulated with standard English constructs and almost leads to a form of idiomatic English.

Based on Applicants' partial clarification put forth in the reply, one interpretation or construction of such incongruously phrased limitation could be:

determining that the application program installer has incorrectly identified an installation of the update to the network resources on the first server as a successful installation;

or

determining that the application program installer has detected an installation ( of the update ... first server) as being an installation error.

The incoherently structured sentence as of now leads to more than one ways of interpreting and should it be maintained in this form would potentially lead to a rejection under USC 112 second paragraph in that the claim fails to particularly point out and distinctly claim the subject matter which applicant regards as the invention; or a potential USC 112 first paragraph for not being supported by the specifications.

Correction is required.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Basani et al., USPN: 6,748,447 (hereinafter Basani), in view of Mathur, USPN: 5,008,814 ( hereinafter Mathur); and further in view of Araujo et al., USPubN: 2001/0047406 (hereinafter Araujo).

**As per claim 1**, Basani discloses a method comprising:

providing an update for altering network resources of a customer being served on one or more servers (e.g. *brower-based ... content ... configuration; notifies the user ... file changes, assignment ...removing ... modifying ...parameters* -- col. 5, lines 19 to col. 6, line 49 – Note: user request for a content reconfiguration or files alteration being messages or assignments via a browser interface and a CCM read on update for altering resources of a user serviced/hosted via a group of servers; col. 7, lines 48-64; *individual components* - col. 20, lines 29-61; *configuration ... update* – col. 21, lines 40-52);

selecting a first server of the cluster of servers (e.g. *group leader 30a-b* – Fig. 1);

backing up a starting configuration at one or more servers (e.g. col. 19, lines 39-62); and

utilizing an application program installer to update to the resources of the one or more servers (e.g. *executables ... to install* – col. 21, lines 39-52 – Note: software executable to effect an installation read on application program installer).

But Basani does not disclose backing up a starting configuration of the first server and utilizing the program installer to update the first server and determining whether to restore the starting configuration of the first server with a backup-restore application program. However, Basani does disclose the concept of commit an requested assignment in conjunction with backup (col. 19, lines 37-57). In a cluster of network devices wherein a leader device is being established for intra-cluster communication to receive and execute a command for update analogous to Group Leader of Basani, Mathur also discloses providing an update to be installed at a leader machine, one chosen first of the cluster of devices, and such upgrade software being tested before being dispatched to the rest of the cluster's nodes (e.g. Fig. 1; col. 4, lines 52 to col. 5, line 6; col. 6 lines 3-10 ) and also discloses determination for roll-out in case of failure during installation on any devices in the cluster ( e.g. Fig. 2). It would have been obvious for one of ordinary skill in the art at the time the invention was made to provide a trial machine, e.g. a first server as claimed, as taught by Mathur and implement the update installation trial to this first machine among the cluster of servers by Basani so that upon failure thereof, determine to execute a backup-restore program to that trial machine as suggested by Mathur. Based on the concept to try before commit as suggested by Basani and further enhanced by Mathur, one skill in the art would be motivated to do this because it is more resource-efficient to apply a trial on one sample chosen among a group of target machine and would make it easier to recover should a failure is detected upon such lead trial as suggested by Mathur.

Nor does Basani explicitly disclose that the customer network resources are hosted on one or more hosting servers of a hosting service and that the clusters of servers are hosting servers. The distribution using a plurality of servers as disclosed by Basani entails that servers

Art Unit: 2124

store resources related to users in order to provide configuration, changes or update based on changes in policies or network security requirements (e.g. ... *enhanced security* ... *privacy*; *registration* ... *members* - col. 5-6). That teaching implies user resources being hosted by a lead server or a plurality of servers that provide support to content distribution or updates to the user network resources. Further, Basani discloses a content management service reminiscent of hosting service having interface through which user can request application execution or data alteration or retrieval ( e.g. Fig. 2) and to effect transaction type checking as well as access privileges verification (e.g. *content dist – Policy, browser-based policy control* -Fig. 1); hence the concept of user resources being hosted on a server is strongly implied if not disclosed. In case it is not explicitly clear that user resources are hosted on host servers, that limitation would have been obvious.

Araujo, in a method using a intermediate service analogous to the content management center by Basani situated between the internet users and a private network to servers, discloses hosting of remote customer via a web-based browser interface at a service enablement platform ( *SEP*- pg. 4, para 0032-0037). It would have been obvious for one of ordinary skill in the art at the time the invention was made to provide a hosting capability to the content management service by Basani using the hosting platform as suggested by Araujo, because of the known benefits that come with hosting services, i.e. hosting application for a thin-client paradigm as mentioned by Araujo but also providing faster control over and retransmission of users requests that would otherwise demand time-consuming communications and resources required to be allocated among the remote users, thereby possibly burden network communication bandwidth

**As per claim 2**, Basani only discloses backup for roll back but does not specifically disclose determining the application program installer of the update to the resources of the first server to be incorrect and upon which restoring the starting configuration with the backup-restore program. But this limitation has been addressed in claim 1 above using Basani's commit and rollback teachings in conjunction with Mathur's trial installation applied to a first node prior to dispatching to the rest of the clusters and roll-back program.

**As per claims 3 and 4**, Basani does not disclose selecting a second server of the hosting server but Mathur teaches committing being propagated from the master task node to a slave node using selective distribution (e.g. *exclude nodes ... not appropriate* - col. 8, lines 23-65 – Note: exclude inappropriate nodes is equivalent to selecting a second server) to the rest of the servers and distributing a successfully tried software to the rest of the cluster nodes as mentioned in claim 1; hence the combination as set forth in claim 1 is herein used to address the limitation as to selecting a second server and replicating the first server onto a second server to apply the update as well as utilizing the program installer to apply the update on the second server because of the same reasons included in the corresponding rejection of claim 1.

**As pre claim 5**, Basani ( in view of Mathur) does not explicitly disclose that an update comprises differences between the network resources of hosted customer hosted by the hosting service and a new version of such resources prepared by the customer. Official notice is taken that the concept that an update necessarily encompasses a difference between a current version held by a customer and a newer version to be updated to and being requested by the customer within his/her preparing interface tool/environment is a well known concept at the time the invention was made. Applying this concept to the altering of network resources by Basani and

Art Unit: 2124

upgrade of cluster nodes as taught by Mathur, the limitation as to the update having a difference as taught by the above notice would have been obvious because there would be no need to update should there be no difference between the current version of resources at the customer's environment and the version held at the server level.

**As per claim 6**, Basani teaches update of data files and applications and records (e.g. database 68, file list/delta, versioning – Fig. 2)

**As per claim 7**, Basani discloses a machine-readable medium having program instructions for performing:

providing an update for altering network resources of a customer served through one or more servers(e.g. *notifies the user, browser-based User interface* -- col. 5, lines 19-62 – Note: user request for a alteration being notified via an interface is equivalent to update for altering resources of a user serviced via a group of servers);

selecting a first server of the cluster of servers (group leader 30a-b – Fig. 1);

backing up a starting configuration at one or more servers (e.g. col. 19, lines 39-62); and

utilizing an application program to install the update to the resources of the one or more servers (e.g. *executables ... to install* – col. 21, lines 39-52).

But Basani does not disclose backing up a starting configuration of the first server and utilizing the program installer to update the first server and determining whether to restore the starting configuration of the first server with a backup-restore application program. Nor does Basani disclose that the network resources of a customer are hosted on one or more hosting servers of a hosting service; i.e. the clusters of servers are hosting servers.



But these limitations are already addressed in claim 1 using the combination of Basani, Mathur, and Araujo's teachings.

**As per claims 8-10**, refer to corresponding rejection as set forth in claims 2-4 respectively.

**As per claims 11-12**, refer to corresponding rejection as set forth in claims 5-6 respectively.

**As per claim 13**, Basani discloses a system for implementing a new use for an application program installer operable to install an application program (e.g. *executables ... to install* – col. 21, lines 39-52) and rollback an installation if it appears unsuccessful, and a backup-restore program to backup and restore (e.g. col. 19, lines 39-62) a configuration of a machine, the system comprising:

a public network coupling a customer and a content management manager (e.g. *content creators, CCM* – Fig. 1);

a private network coupling a content management manager, a content distributor ( *distribution server 16* – Fig. 1), and a POD comprising comprising servers for hosting network resources of the customer ( *back-end servers* – Fig. 1);

wherein an update from a customer to the network resources being hosted by a POD is received over the public network by the CMM server of front-end servers network to the content distributor which is configured to select a first server among a cluster of back-end servers (Fig. 1),

utilize backup-restore program to backup a starting configuration at one or more servers (e.g. col. 19, lines 39-62); and

utilize an application program to install the update to the resources of the one or more servers of the POD (e.g. *executables ... to install* – col. 21, lines 39-52).

But Basani does not disclose a firewall coupling a private network of hosting servers with a public network over which the customer upgrade is being formed and sent over to the private network to the content distributor to update the resources hosted by the POD. As for the firewall limitation, the CMM by Basani is reminiscent of a firewall in terms of policies to filter transaction across the outside network and the back-end servers (e.g. col. 5, lines 15-45; Fig. 1) and is designed to communicate upgrade request from authoring client to the back-end servers or POD (col. 5, lines 19-62). Araujo, in a system using a service enablement platform (SEP) situated between the back-end servers and the internet users, discloses a firewall separating the internet and the private network in which the SEP, acting like a content distributor, communicates with the POD (e.g. *Firewall 57, SEP 200* - Fig. 1). At the time the invention was made, setting a firewall to separate enterprise back-end services from broad band wide area network was a known concept. In view of the policies enforced to commit some of transaction as disclosed by Basani, it would have been obvious for one of ordinary skill in the art at the time the invention was made to provide a firewall in addition to the Basani's CMM so to delegate firewall functionalities as mentioned by Araujo on top to the distribution and synchronization tasks taken by the CMM. One skill in the art would be motivated to do so because this would increase protection for data integrity inside the private network, i.e. back-end servers, such as being well-known in the art of using firewalls as suggested via Araujo's teachings.

Basani does not disclose utilizing backing up a starting configuration of the first server and utilizing the program installer to apply the update the resources hosted by the POD. Nor

Art Unit: 2124

does Basani disclose that the POD comprises hosting servers, that the network resources of a customer are hosted on one or more hosting servers of the POD, i.e. that the clusters of servers are hosting servers belonging to the POD (Note: a cluster of server to provide a common enterprise of services protected by a private network is equivalent to a POD, and this is disclosed by Basani in view of Araujo).

But these above limitations are already addressed in claim 1 using the combination of Basani, Mathur, and Araujo's teachings.

**As per claim 14**, Basani disclose a first network communicating a client attempts for network resources being received by a front-end server and provided over the POD of the back-end (Fig. 1); but does not disclose access attempt for network resources being received by a firewall; but this firewall implementation has been addressed in claim 13 and is rejected herein using the same rationale as set forth therein.

**As per claim 15**, Basani discloses a content distributor for backups and restorations (e.g. backups, restorations - col. 5, lines 15-35) but does not specify restoring the configuration of the first server. But this limitation has been addressed in claim 1 using Mathur's teachings.

**As per claims 16-17**, refer to corresponding rejection as set forth in claims 2-3 respectively.

**As per claims 18-19**, these claims correspond to claims 4-5 and are rejected with the corresponding rejection as set forth therein respectively.

**As per claim 20**, Basani discloses a method for implementing a new use for an application program installer operable to install an application program (e.g. *executables ... to install* – col. 21, lines 39-52) and rollback an installation if it appears unsuccessful, and a

Art Unit: 2124

backup-restore program to backup and restore (e.g. col. 19, lines 39-62) a configuration of a machine, the method comprising the steps of :

providing an update for altering(e.g. *notifies the user, browser-based User interface --* col. 5, lines 19-62 – Note: user request for a alteration being notified via an interface is equivalent to update for altering resources of a user serviced via a group of servers);

selecting a first server of the cluster of servers (e.g. *group leader 30a-b – Fig. 1*);

backing up a starting configuration at one or more servers (e.g. col. 19, lines 39-62); and

utilizing an application program to install the update to the resources of the one or more servers (e.g. *executables ... to install – col. 21, lines 39-52*).

But Basani does not disclose backing up a starting configuration of the first server and utilizing the program installer to update the first server and determining whether to restore the starting configuration of the first server with a backup-restore application program. Nor does Basani disclose that the network resources of a customer are hosted on one or more hosting servers of a hosting service; i.e. the clusters of servers are hosting servers.

But these limitations are already addressed in claim 1 using the combination of Basani, Mathur, and Araujo's teachings.

**As per claims 21-22**, refer to corresponding rejection as set forth in claims 2-3 respectively.

### ***Response to Arguments***

5. Applicant's arguments filed 11/22/2004 have been fully considered but they are not persuasive. Following are the observations in regard thereto.

**As per the Claims 2, 8, 16, 21 objections:**

Art Unit: 2124

(A) Applicants have not convinced on the correctness of the English structures of the claim when trying to break it down into the constructing parts. Yet, the nature of the confusing or erroneous parts of this English construct is simple. There is some linking term missing that would enable better understanding of the claim as recited. The claim should be amended to better set forth the connotation as explained by Applicants in the last paragraph of pg. 10 of Applicants Remarks. The specifications at page 5 or 7 disclose a possible error in installation leading to a roll-back but there is no clear or explicit disclosing of a software ability such as 'determining application program installer incorrectly identified a successful installation ... first server' as literally phrased. It is hence reminded that not only an incongruous English construction is jeopardizing a favorable claim interpretation but a lack of definiteness in the claim language can also implicate a deficient support by the specifications or failure to set the metes and bounds by the claim. And it is deemed a waste of resource just for the effort in analyzing and pointing out which is correct or incorrect in terms of English sentences construction; therefore, a proposed correction to the claim can be referred to back at the Claim Objection section as set forth above.

**As per rejection 35 USC §103:**

(B) Applicants have mentioned about providing affidavit type of evidence that would predate the Araujo reference. It is reminded that Araujo qualifies as a USC 102(e) type of reference the earliest effective filing date of which goes back to April 13, 2000 as per its provisional application priority benefits under statute USC 119(e).

(C) Applicants have submitted that Basani's distribution of digitized data is not equivalent to a conventional 'application program installer' to 'apply the update to the network resources of

Art Unit: 2124

customer' of claim 1 (Appl. Rmrks, pg. 13, top). The rejection has cited portions from Basani that show resources being objects for update, resources that involve security-related files or content/software pertinent to users for which a change is to be provided via the CCM and other services. The limitation recited as 'network resources of the customer' is not sufficiently narrow so that it distinguish from what Basani's resources being modified or changed via the CCM protocol and related distribution service approach in accordance to requirements by network policies or security. When a user security-related resources ( i.e. an virtually inherent feature in network communication protocol) are involved as a result of a need of change -- or request for new configuration -- due to policies/protocol, it is imperative that the server have prior possession of the user profile data so that it would know whether such user data would still be in accordance with said policy change; and this is alluded to or disclosed in Basani's cited portions ( see Fig. 1-3). Hence, Basani has fulfilled the so-called 'user network resources'. Further, the limitation recited as 'application program installer' is not specific sufficiently to clearly distinguish from a software executable enabling an update as disclosed by Basani's CCM-based distribution and update system. Hence, the arguments are not convincing because, based on the claim as recited, a broad reasonable interpretation has been applied; and what is cited in the rejection do teach 'application program installer' to 'apply the update to the network resources of the customer'.

(D) Applicants have submitted that Mathur only provide update to an entirely clean copy of software rather than 'performing the update to existing ... as recited' ( Appl. Rmrks, pg. 13, bottom, pg. 14, top). The rejection has pointed out where the deficiency of Basani can be overcome by providing the teaching of Mathur being keeping a copy of the old software for roll-

Art Unit: 2124

back, i.e. a backup-restore scheme of an application program. While it is clear that Basani teaches update to network resources related to a user ( i.e. update of existing resources, configuration data, protocol related content), it is hence noted that Mathur is not used to reinforce such limitation which has been addressed in section C above. To Applicants' argument, it does not import whether Mathur updates an application or portions of existing resources on a target computer; the methodology or specific purpose at issue here is to back-up and restore, and the target entity being subject to back-up or restore -- being a whole application program or portions of bigger computer resources -- is but a form of intended use ( Note: 'intended use' does not have patentable weight unless the claim clearly provides substantial, specific, and credible description as to why such use is essential to the invention). The motivation to combine Mathur's teachings with the update of network resources by Basani has been set forth in the rationale of the rejection, and Applicants by arguing on deficiencies on the references, each taken individually, do not succeed in pointing out why the combination would have been inappropriate. In regard to arguments against the references taken individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

For those reasons, the rejection will stand as set forth above.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan A Vu whose telephone number is (272) 272-3735. The examiner can normally be reached on 8AM-4:30PM/Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (571)272-3719.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-3735 ( for non-official correspondence – please consult Examiner before using) or 703-872-9306 ( for official correspondence) or redirected to customer service at 571-272-3609.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: 571-272-2100.



Art Unit: 2124

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

VAT

March 11, 2005

*Kakali Chaki*  
**KAKALI CHAKI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100**